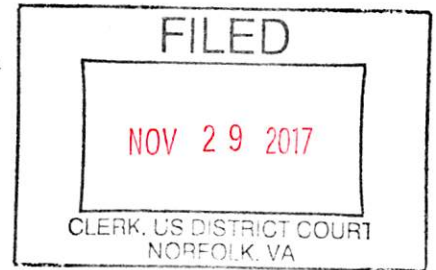


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



FRANKLIN BRANDON TOLBERT, #1287189

Petitioner,

v.

Civil Action No. 2:17cv150

**HAROLD W. CLARKE, Director,
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of petitioner's constitutional rights pertaining to his convictions in 2012 in Norfolk Circuit Court for robbery, use of a firearm during the commission of a felony, credit card theft, and credit card fraud. As a result of the convictions, petitioner was sentenced to serve nineteen years and twelve months in prison.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed September 29, 2017, recommends dismissal of the petition with prejudice. The Report and Recommendation advised Petitioner of his right to object and the time limit for doing so. On October 16, 2017 the court received from Petitioner a motion for extension of time to file his objections to the Report and Recommendation. (ECF No. 18). The court granted Petitioner's request and directed his objections be filed no later than November 13, 2017. (ECF No.

19). To date the court has received no objections, and the time for filing objections has now expired.

Accordingly, the court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed September 29, 2017, and it is therefore ORDERED that respondent's Motion to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED with prejudice.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.



RAYMOND A. JACKSON
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

November 29, 2017